Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

R. LEON SMITH and S. DIANE SMITH,

Petitioners,

v.

THOMAS C. HUNTON, FRANK GLOVER and WINFRED RILEY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

R. LEON SMITH
S. DIANE SMITH
6314 Forest Hills Court NE
Albuquerque, NM 87109
(505) 822-9301

Pro Se Counsel

35 pp

QUESTION PRESENTED

1. Whether this Court should exercise its supervisory powers to correct the clearly erroneous ruling that Petitioners' *Bivens* action was barred by the statute of limitations, which erroneous ruling left Petitioners without redress for Respondents' willful and intentional deprivation of Petitioners' right to due process of law and which resulted in the loss of Petitioners' family farm, their home, their livelihood and their way of life.

LIST OF ALL PARTIES

All parties to this litigation are listed in the caption of the case.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF ALL PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

REPORTS OF OPINIONS IN THE CASE 1

GROUNDS OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATEMENT OF THE CASE 2

ARGUMENT 6

I. The District Court Erred When It Failed To Find That The Statute Of Limitations Was Tolled By The Filing Of Petitioners' Counterclaim 6

CONCLUSION 8

APPENDICES

APPENDIX 1 ..... App. 1-1

APPENDIX 2 ..... App. 2-1

APPENDIX 3 ..... App. 3-1

APPENDIX 4 ..... App. 4-1

APPENDIX 5 ..... App. 5-1

TABLE OF AUTHORITIES

Page

CASES

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) 4, 5, 6, 7, 8

Hartford v. Gibbons, 617 F.2d 567 (10th Cir. 1980) 7

Hurst v. United States Dept. of Education, 901 F.2d 836 (10th Cir. 1990) 7

Wilson v. Garcia, 471 U.S. 261 (1985) 4, 5

STATUTES:

7 U.S.C. § 6901-7014 (Supp. 1997) 2

28 U.S.C. § 1254 1

F.R.C.P. 12(b)(6) 2

CONSTITUTIONAL PROVISIONS:

Fifth Amendment, U.S. Constitution 1, 4

OTHER AUTHORITIES:

51 Am.Jur.2d, Limitations of Actions, § 78 (1970) 7

72 A.L.R. 3rd 1065 (1976) 8

Rule 13.1, Rules of the Supreme Court 5

N.M.Stat.Ann. § 37-1-8 (Michie 1978) 4

Wright and Miller, Federal Practice and Procedure: Civil § 1419 (1971) 7

REPORTS OF OPINIONS IN THE CASE

The unpublished Order and Judgment of the Tenth Circuit Court of Appeals, filed May 11, 1998, is attached as Appendix 1. The United States district court's unpublished Order Granting Defendants' Motion To Dismiss Complaint, filed January 30, 1997, is attached as Appendix 2.

GROUNDS OF JURISDICTION

The Tenth Circuit Court of Appeals entered judgment on May 11, 1998. This Court has jurisdiction to review by writ of certiorari the decision of the Tenth Circuit pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS

FIFTH AMENDMENT, U.S. Const.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Petitioners Leon and Diane Smith ("Smiths" or "Petitioners") were family farmers in Curry County, New Mexico. The Respondents are, or were, employees of the Farmers Home Administration ("FmHA") of the United States Department of Agriculture ("USDA").[1]

Beginning in March of 1991 and continuing until March of 1993, the Smiths attempted to participate in the loan servicing and debt restructuring programs of the FmHA in an effort to save their family farm. Specifically, in March of 1991, the Smiths sought either a write down of their loans or a conveyance of their farm to the United States on a lease/buy back program. *See* Appendix 3, pp. 2-3. In direct violation of their agency's regulations and federal law, Respondents refused to assist the Smiths in obtaining access to these FmHA programs. *Id.*[2]

On March 5, 1993, the Smiths again approached the FmHA to obtain loan servicing and restructuring. Appendix 3, p. 3. Efforts by the Smiths to submit the requisite application for participation in the programs were

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[1] Due to a reorganization of the USDA, the FmHA no longer exists as an entity of the department. The FmHA's functions, as well as the functions of the former Agricultural Stabilization and Conservation Service ("ASCS"), were consolidated within the Farm Service Agency in 1994. *See* 7 U.S.C. §§ 6901-7014 (Supp. 1997). For ease of reference, the former agency name will be retained for use in this petition.

[2] The facts of the case taken from the allegations in the Complaint are presumed true because the dismissal was predicated upon F.R.C.P. 12(b)(6). Respondents conceded this point in their brief to the Court of Appeals. Brief of Appellees, at 3, n.4.

rebuffed by Respondent Hunton, who personally refused to accept the application. Appendix 3, p. 3; Appendix 4, p. 7. Hunton's refusal was in direct violation of agency regulations requiring that an application be accepted even if the application is incomplete. Appendix 3, p. 3. When resent by certified mail after the March 8, 1993 deadline, the application was accepted. Appendix 4, p. 7.

Due to Respondents' decision to deny the Smiths the opportunity to participate in the federal loan servicing programs, the Smiths were forced to seek bankruptcy protection under Chapter 12 of the bankruptcy code. Objections to the Chapter 12 plan by Respondents and others forced the Smiths to refile under Chapter 7.

Foreclosure actions brought against the Smiths by the federal land bank and individual creditors resulted in the loss of the Smith family farm at auction in August and December of 1993.

In December of 1994, FmHA filed an additional foreclosure action against the Smiths. Critically, on June 30, 1995, the Smiths filed a counterclaim to the FmHA's suit in which they alleged that the "FmHA failed to follow the law in considering Leon Smith for debt restructuring." Appendix 4, p. 7. The Smiths' counterclaim was pending from its filing date on June 30, 1995, until January 22, 1996. On that date the parties agreed to the stipulated dismissal of the government's foreclosure action. *See* Appendix 5. The dismissal stipulation recognized that the Smiths' counterclaim had not been adjudicated and specifically stated that the Smiths' counterclaims and defenses "remain viable for independent adjudication." *Id.*

On June 19, 1996, the Smiths brought a *Bivens*[3] action against Respondents seeking redress for the violations of their constitutional right to due process of law under the Fifth Amendment. *See* Appendix 3. The Complaint alleged that Respondents intentionally and willfully deprived the Smiths of access to FmHA programs. *Id.* Respondents did so by failing to use then-current farm valuations in determining the Smiths' eligibility for an FmHA program and by refusing to accept the Smiths' application form for participation in an FmHA program. Federal regulations specifically required Respondents to use current land valuations and to accept the application form even if incomplete.[4]

Respondents sought dismissal of the Complaint, arguing under Rule 12(b)(6) of the Federal Rules of Civil Procedure that the action was time-barred by the three-year statute of limitations applicable to *Bivens* actions brought in the state of New Mexico. *See Wilson v. Garcia*, 471 U.S. 261 (1985); and N.M.Stat.Ann. § 37-1-8 (Michie 1978). In opposition to the dismissal motion, the Smiths argued in part that the Complaint was timely under the New Mexico saving statute.

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[3] *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

[4] Petitioners believe the Respondents' actions were the direct result of Petitioners' filing of a Whistleblower complaint which alleged the existence of fraud and corruption by farmers participating in federal farm programs and which additionally alleged that those farmers were being aided and abetted by ASCS employees. *See* Whistleblower Complaint No. P0320-0014.

On January 30, 1997, the district court granted the motion to dismiss, finding that the Complaint was barred by the three-year statute of limitations. Appendix 2. Specifically, the court found that the last action complained of occurred in March of 1993, and that to be timely, any claim arising therefrom had to be filed by March of 1996. *Id.* Under the court's ruling, Petitioners' *Bivens* claim was filed three months late. The court rejected Petitioners' claim that the action was saved by the New Mexico tolling statute, finding that the *Bivens* action involved neither the same parties nor the same cause of action, as required under that statute. *Id.* Implicitly, the district court rejected Petitioners' claim that the statute of limitations was tolled by the filing of their counterclaim in the government's foreclosure action.[5]

On February 28, 1997, Petitioners timely appealed the district court's ruling to the United States Court of Appeals for the Tenth Circuit. On May 11, 1998, the Tenth Circuit, in an unpublished opinion, affirmed the district court's ruling, finding that the Complaint was untimely, the state saving statute was inapplicable, and declining to exercise its discretion to equitably toll the limitations statute. *See* Appendix 1.

Petitioners timely bring this Petition for Writ of Certiorari within ninety days of the May 11, 1998, ruling of the Tenth Circuit. Rule 13.1, Rules of the Supreme Court.

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[5] The district court found: "From the date the action arose to and including the date of filing of this action there was no tolling of the statute of limitations." Appendix 2, p. 2.

ARGUMENT

I. The District Court Erred When It Failed To Find That The Statute Of Limitations Was Tolled By The Filing Of Petitioners' Counterclaim.

The district court found that New Mexico's three-year statute of limitations for personal injuries was applicable to the Smiths' *Bivens* action. The court further found that the last act complained of in the Complaint occurred in March of 1993 when Respondents again denied the Smiths the opportunity to participate in the federal loan restructuring and farm lease/buy back programs. Applying the limitations statute, the court found that the deadline for the *Bivens* action ran in March of 1996. Implicit in this ruling is the finding that nothing interceded to toll the running of the statute.

The court's ruling appears to spring from its finding that the instant action and the counterclaim were different causes of action. *See* Appendix 2, p. 2. But even a cursory review of the Complaint and the counterclaim reveals that the Smiths were seeking redress for the very same actions – the intentional and willful violation of federal law by the FmHA through its employees to deny the Smiths their federal constitutional right of due process to participate in the federal programs necessary to avoid the loss of their family farm and home. The court's inability to recognize this fact served to elevate form over substance, with horrific consequences to the Smiths.

The Smiths agree that the three-year statute of limitations for personal injuries set forth in New Mexico law is the applicable limitations period for their *Bivens* claim. They argue, however, that the district court erred in its

application of the limitations period when it failed to find that the prior filing of their counterclaim to the government's foreclosure action tolled the statute. The Smiths argue that the limitations statute was tolled from the time the counterclaim was filed on June 30, 1995, until the foreclosure action was dismissed on January 22, 1996, a period of more than six months. When this period is added to the three years provided by the limitation statute, it is clear that the Smiths had until September of 1996 to file their *Bivens* action. Because the Complaint was filed in June of 1996, it was timely and the courts below erred in finding otherwise. The Smiths' argument finds support both in the law and in basic principles of equity.

It is well settled that counterclaims which seek affirmative relief must comply with the applicable statute of limitations. *See Hurst v. United States Dept. of Education*, 901 F.2d 836, 837 (10th Cir. 1990), and cases cited therein. Here, there is no question that the counterclaim to the federal foreclosure action was timely filed within the three-year period established by the district court. It is also the prevailing practice in the majority of courts that

> [W]here a plaintiff institutes an action in a timely manner, the running of the statute of limitation governing [a] compulsory counterclaim is tolled, provided the counterclaim was not time-barred at the commencement of the plaintiff's action.

Hartford v. Gibbons, 617 F.2d 567, 570 (10th Cir. 1980) (citing Wright and Miller, Federal Practice and Procedure: Civil § 1419 (1971); 51 Am.Jur.2d, Limitations of Actions, § 78 (1970); Annot., Tort Claim Against Which Period of

Statute of Limitations has Run as Subject of Setoff, Counterclaim, Cross Bill, or Cross Action in Tort Action Arising out of Same Accident or Incident, 72 A.L.R. 3rd 1065 (1976)).

Applying the majority rule to the present facts, it follows that because both the foreclosure action and the counterclaim were timely filed, the statute of limitation on the *Bivens* claim was tolled at the moment the counterclaim was filed. The district court committed clear error in ruling that the *Bivens* action was time-barred, and the Court of Appeals similarly erred in affirming the district court.

CONCLUSION

Petitioners recognize that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. The Smiths believe, however, that the nature of Respondents' acts, namely the deprivation of their right to due process of law, and its attendant injury – the loss of their home, their farm, their livelihood and their way of life – is a sufficiently compelling reason to merit this Court's intercession and the exercise of its supervisory powers to correct a grievous wrong.

For these reasons Petitioners respectfully request that this Court grant a writ of certiorari to review the Tenth Circuit's affirmance of the district court's order of dismissal.

R. Leon Smith
S. Diane Smith
6314 Forest Hills Court NE
Albuquerque, NM 87109
(505) 822-9301
Pro Se Counsel

July 28, 1998

APPENDIX 1

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

R. LEON SMITH and S. DIANE SMITH, Plaintiffs-Appellants,	)	
v.	)	No. 97-2057
THOMAS C. HUNTON, FRANK GLOVER and WINFRED RILEY, Defendants-Appellees.	)	(D.C. No. CIV-96-878-LH) (District of New Mexico)

ORDER AND JUDGMENT*

(Filed May 11, 1998)

Before **PORFILIO, LOGAN,** and **MURPHY,** Circuit Judges.

Leon and Diane Smith farmed land in Curry County, New Mexico, which was sold in a foreclosure action. During the proceeding, the Smiths, appearing pro se, filed a counterclaim against FmHA which they ultimately agreed to dismiss with a stipulation that the

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

claims made by the Smiths "remain viable for independent adjudication."

Relying upon *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), the Smiths filed this action in June 1996 alleging Frank Glover, Thomas Hunton, and Winfred Riley, FmHA officials, committed violations of plaintiffs' rights to due process and equal protection under the Fifth Amendment as well as various violations of FmHA rules and procedures. The Smiths sought injunctive relief "to insure that they can obtain FmHA loans and loan servicing in the future" and unspecified damages. Defendants moved to dismiss on grounds of failure to state a constitutional claim, statute of limitations, and qualified immunity.

The district court granted the motion primarily upon statute of limitations grounds.[1] First, it found the actions complained of in this action initially arose in March 1991 and reoccurred in March 1993. The court then concluded the nature of those allegations triggered a three-year statute of limitations, making the present action filed in June 1996 untimely. The court next found the reservation of claims in the foreclosure action did not toll the statute of limitations because the Smiths' claims were asserted against the FmHA and not the individual defendants in this case.

On appeal, the Smiths raise three issues, none of which has merit. What the Smiths ignore is they have chosen to bring a new action against three individuals

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[1] The court also noted in passing the defendants were entitled to qualified immunity.

who were not parties to the prior suit instituted by the FmHA. Moreover, the counterclaims they asserted in that prior action were made against the agency, and not the individuals. Independently, these factors are sufficient to bar their claims here regardless of their arguments to the contrary.

Bivens, the jurisdictional basis for the present action, is a judicially created remedy having no inherent limitation of action; consequently, it borrows from any closely analogous state statute of limitations. *Industrial Constructors Corp. v. United States Bureau of Reclamation*, 15 F.3d 963, 968 (10th Cir.1994). In this case, New Mexico's three-year limitary period for personal injury applies. *Id.* However, we look to federal law to determine when a cause of action accrues. "The statute of limitations begins to run when the plaintiff knows or has reason to know of the existence and cause of the injury which is the basis of his action." *Id.* at 969.

Plaintiffs alleged they were injured by a March 1991 denial of loan restructuring or lease/buy back; a January 1992 objection to their failed bankruptcy Chapter 12 plan; and a March 1993 rejection of loan restructuring. Thus, it is indisputable that in March 1993, the Smiths knew their efforts to obtain any FmHA relief were stillborn. Accordingly, the Smiths had until March 1996 to file their *Bivens* action.

Their resort to the New Mexico tolling statute must fail because different parties are involved and the actions are totally dissimilar. *Rito Cebolla Investments, Ltd. v. Golden West Land Corp.*, 607 P.2d 656, 666 (N.M.Ct. App.1980) (The tolling statute requires both actions

involve the same parties, the same cause of action, and the same right appearing from the record.). Even if the foreclosure counterclaim included similar allegations, it was a different cause of action against different parties.

Although the Smiths characterize the language in the stipulation to dismiss the foreclosure action as deceptive, any plain reading produces the conclusion the parties wanted to be clear the foreclosure was dismissed with prejudice leaving the counterclaim viable for the Smiths to pursue. Under any scenario, it is impossible to reshape that possibility into the basis for equitable tolling.

Having reached this point, we do not need to consider the Smiths' argument regarding qualified immunity. The lack of timeliness of this action is adequate grounds for its dismissal.

The motion to supplement the record is **GRANTED**, and the judgment of the district court is **AFFIRMED**.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

R. LEON SMITH
S. DIANE SMITH,

Plaintiffs,

vs. No. CV-96-0878 LH

THOMAS C. HUNTON,
FRANK GLOVER, and
WINFRED RILEY,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT

(Filed Jan. 30, 1997)

THIS MATTER came before this Court for oral argument on the Federal Defendants' Motion to Dismiss on December 30, 1996. The Federal Defendants were represented by John J. Kelly United States Attorney for the District of New Mexico and Manuel Lucero Assistant United States Attorney for the same said district and the Plaintiffs was represented by Donald G. Gilpin, after review of the briefs and oral argument by both parties and the Court being fully advised,

THE COURT FINDS:

1. The Court finds that the action complained about in the present action first arose in March 1991 and again in March 1993.

2. The present action was brought in June 1996.

3. The nature of the allegations in the complaint provide for a three year statute of limitation on this type of action.

4. From the date the action arose to and including the date of filing of this action there was no tolling of the statute of limitations.

5. Plaintiffs were defendants in a foreclosure action brought by the United States. In that suit the plaintiffs cross-claimed against the federal agency and not the individuals named in this action.

6. The Court finds the present case is markedly different in that this action is a "Bivins" type suit against individual defendants not named in the foreclosure action in plaintiffs cross-claim and not against the federal agency that brought the foreclosure action, and therefore, not a continuation of that foreclosure action.

7. Therefore, the time to bring the present action has expired. The action brought by the plaintiffs is untimely and therefore, barred by the statute of limitations.

8. The Court, in addition finds that dismissal was also prudent as a matter of Qualified Immunity.

IT IS THEREFORE ORDERED that this action is dismissed with prejudice.

/s/ C. LeRoy Hansen
C. LeRoy Hansen
United States District
Court Judge

Submitted By:

JOHN J. KELLY
United States Attorney

/s/ Manuel Lucero
MANUEL LUCERO
Assistant U.S. Attorney
For Federal Defendants
P.O. Box 607
Albuquerque, NM 87103
(505) 766-3341

APPROVED AS TO FORM:
LAW OFFICE OF
DONALD G. GILPIN

Telephonic approval given 1/24/97
DONALD G. GILPIN
Attorney for Plaintiffs
820 2nd St. NW
Albuquerque, NM 87102
(505) 246-8829

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

R. LEON SMITH, S. DIANE SMITH Plaintiffs, vs. THOMAS C. HUNTON FRANK GLOVER WINFRED RILEY Defendants.	)	CIVIL NO. CIV 96 0878LH **JURY TRIAL DEMANDED**

COMPLAINT

(Filed June 19, 1996)

Comes Now, the Plaintiffs by and through their attorney, Donald G. Gilpin and for Plaintiffs' complaint against the Defendants state as follows:

1. Plaintiffs are residents of the County of Bernalillo, State of New Mexico. At all times herein complained of, Plaintiffs were farmers in Curry County New Mexico.

2. Upon information and belief, at all times hereinafter mentioned, Defendants, were and are Employees of the Farmers Home Administration (FmHA) with its principal place of business in the State of New Mexico at the Agriculture Building, 6200 Jefferson St., NE in the City of Albuquerque, State of New Mexico, zip code 87109.

3. Upon information and belief, at all times hereinafter mentioned, Defendants are residents of the City of Albuquerque, County of Bernalillo and State of New Mexico.

4. Jurisdiction is conferred on this Court by reason of 28 U.S.C Section 1331. Plaintiffs assert that the actions of Defendants violated their due process rights under the United States Constitution, Amendment V.

6. All of the acts complained of herein occurred within the jurisdiction of the United States District Court for the District of New Mexico.

7. In March of 1991, Plaintiffs went to Defendants to obtain loan servicing and/or loan restructuring. Plaintiffs sought either a write down of their loans or a conveyance of their farm to the United States on a lease/buy back program.

8. Defendants told Plaintiffs that the FmHA could not service their loans according to the DALRS program the FmHA prepared.

9. However, Defendants failed to use current data to run the DALRS program. In violation of the FmHA own policies and procedures, Defendants did not obtain current appraisals and a current farm and home plan. Further, Defendants refused to allow Plaintiffs the option to participate in the lease/buy back program for which they met the criteria. In addition, Plaintiffs requested that Defendants provide or assist them with every available loan servicing or debt restructuring option. Defendants refused.

10. Defendants violated Plaintiffs' Constitutional right to due process by failing to discuss, assist and allow access to loan servicing and restructuring options available to FHA borrowers. FmHA policies and procedures require that all FmHA officials assist and provide borrowers with all loan servicing options. Further, FmHA policies and procedures require that its officials afford all borrowers due process when borrowers request loan servicing or restructuring. At all times herein complained of Plaintiffs requested that Defendants afford them the due process that was given to other farmers in the area. Defendants refused.

11. On or about January 1992, after Plaintiffs had filed for relief under 11 USC Section 1201 et seq., Defendants objected to Plaintiffs' Chapter 12 plan. Defendants were the only creditor to object to Plaintiffs Chapter 12 plan. FmHA policies and procedures requires all of its official to cooperate and assist borrowers in formulating a Chapter 12 plan in conjunction with the other creditors. Defendants refused. Plaintiffs were forced to file for relief under 11 U.S.C Section 701 et seq.

12. On or about March of 1993, Plaintiffs again went to Defendants to obtain loan servicing and restructuring. Plaintiffs tried to submit an application to Defendants before it [sic] due date. However, Defendants refused to accept Plaintiffs application stating the application was incomplete. Plaintiffs state the application was complete. FmHA policies and procedures require its official to accept applications even if the application is incomplete. FmHA policies and procedures require its officials to accept incomplete applications and assist the borrowers in completing the application.

13. Defendants actions were wilful and intentional. Defendants actions deprived Plaintiffs constitutional right to due process and equal protection. At no time complained of herein did Defendants afford Plaintiffs the assistance or access to loan servicing and loan restructuring they afforded to other farmers in the area.

14. At all times herein complained of, Plaintiffs requested that Defendants afford them the due process that was given to other farmers in the area. Defendants refused.

15. As a result of Defendants wilful and intentional disregard for Plaintiffs Constitutional rights, Plaintiffs lost their family farm.

16. As a result of Defendants wilful and intentional disregard for Plaintiffs Constitutional rights, Plaintiffs have suffered damages.

17. Plaintiffs request a trial by jury.

WHEREFORE, Plaintiff respectfully requests this Court to:

(A) Award Plaintiffs damages in an amount to be determined at trial;

(B) Award Plaintiffs attorney's fees, court costs and all other reasonable costs incurred;

(C) Award Plaintiffs injunctive relief to insure that they can obtain FmHA loans and loan servicing in the future; and

(D) Grant Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully Submitted

by /s/
Donald G. Gilpin
Attorney for Plaintiffs
820 2nd Street, NW
Albuquerque, NM 87102
(505) 246-8829
(505) 243-7755 FAX

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

CIVIL NO.
94-1255MV/LFG

vs.

R. LEON SMITH, and S. DIANE SMITH a/k/a SYLVIA D. SMITH, a/k/a SYLVIA DIANE SMITH,

Defendants.

ANSWER TO AMENDED COMPLAINT

(Filed Jun. 30, 1995)

Defendants, R. Leon Smith and S. Diane Smith herein answer Plaintiff's Complaint as follows:

1. Defendant admits the allegations in paragraphs one, two, and three.

2. Defendants are without sufficient information to admit or deny the allegations contained in paragraphs 4-13 and therefore deny same.

3. We further state that we do not have sufficient documents and/or information to intelligently answer each paragraph of the Complaint.

COUNTERCLAIM

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

In regards to the actions of the Agricultural Stabilization and Conservation Service, hereafter referred to as ASCS, in the sign-up of R. Leon Smith into the Conservation Reserve Program, hereafter referred to as CRP:

1. The ASCS should have used current year (1986) acres for RP-2 Estimation Purposes. They did not, despite the fact that this statement has been made. 1987 crop bases were used for estimating purposes, showing that the form was not completed until after rules for the 1987 crop bases were issued.

2. CRP-2 worksheets, Form ASCS-476, base notices, computer verification and CRP-15's were not consistent or correct, and this has been acknowledged by the New Mexico State ASCS Committee.

3. Leon Smith should have been given the choice on March 13, 1987, of which bases to reduce in order to reduce bases back to actual crop land before putting any land into the 1987 farm program. Leon Smith was not given this opportunity. After notice was sent to Leon Smith, which arbitrarily reduced acres, he was in the office in Clovis, New Mexico three days later and given no opportunity to change or adjust the figures. These figures were presented in percentages rather than in actual acres. At this time, in order to sign up into a totally unrelated and necessary farm program, he was forced to sign this CRP-15 which inaccurately and arbitrarily reduced his acres.

4. The second and incorrect CRP-15 was not required to be signed until 30 days before the first CRP payment was to be paid.

5. Because all documentation necessary for participation in the third corn sign-up was not available until the fourth sign-up, Leon Smith's participation should have been effective at the time the documentation was properly prepared and available for his signature, which was only during the fourth sign-up. It was during this time that the corn bases were actually taken. This should have made him eligible for the corn bonus. This has never been collected.

6. Leon Smith made four trips to the ASCS office in Clovis, New Mexico in order to sign into the 1988 farm program, it taking this many times for personnel to determine the correct payments for participation.

7. The Curry County, New Mexico ASCS officials, Kay Kelley and Kelly Dobbs, were unable to give Leon Smith any current information, but in fact either deliberately misled or misguided him in connection with the third and fourth CRP sign-up and the Corn Bonus for the fourth CRP sign-up. There was no valid offer and acceptance between Leon and the ASCS into the third sign-up, and the statement in the letter of March 21, 1988, in the second paragraph beginning at the first line, and termination with the statement, "Both offers were accepted and the contracts executed on October 9, 1986, by the Curry County ASCS Committee" was factually incorrect. Only after being forced to sign this incorrect CRP-15 on March 13, 1987 was the contract ratified. As stated earlier, this form was in percentages rather than actual acres. Only

after being presented with a CRP-15 that had the percentages changed to actual acres one month before the payments were to be paid was it discovered that the acreages were for the wrong period, and were incorrect and arbitrary.

8. When a hearing was held on this matter with the USDA Agricultural Stabilization and Conservation Service, Washington, D.C. through the Deputy Administrator, State and County Operations, Thomas Von Garlem, he denied the complaint on the rounds [sic] that both the one time corn bonus and the regular annual payment could not be collected in the same year. In fact, there are regulations sent to the County ASCS offices showing how this could be done that are signed by Thomas Von Garlem. This in effect violated Defendant's Constitutional right to a fair and honest hearing by an impartial judge. This, in effect, led to Defendant's ultimate bankruptcy.

9. At this time, Defendant turned in under the Whistle Blower's Act fraud and corruption by others who had violated farm programs while being aided and abetted by ASCS employees. The Whistleblower's Complaint was number P0320-0014. Governmental harassment was predicted by Agent Lynn Odenbach of the agency. Harassment did occur on all Government levels. The Curry County, NM ASCS has eliminated various documents from his file repeatedly, causing harassment on many occasions, still occurring to this day. The last occurrence of this was on or about April 26, 1995.

10. Monies due according to farm programs and CRP contracts were withheld until such time as the bank told Leon Smith that they would have to foreclose on him

unless he signed the incorrect paper. At this time, he sighed it under protest. At that time all back due monies were paid, forcing exorbitant taxes and ultimately bankruptcy.

11. Due to the fact that the acreage allotment formulas for Leon Smith's CRP sign up were wrong in the first place, when the farm was reconstituted and divided, the acreage allotments are wrong still. Leon Smith is asking for a correction of acreage allotments for this farm to reverse the decision of Frederick R. Young of the National Appeals Division of the USDA.

FEDERAL CROP INSURANCE PROGRAM

In Regrads to the Actions of the Federal Crop Insurance Program:

1. Monies due by the Federal Crop insurance were defaulted on when pending bankruptcy was discovered, causing undue hardship and then they defaulted on a second claim for the 1990 corn crop. The 1990 corn claim has never been paid and is still due to Leon Smith.

RURAL ECONOMIC COMMUNITY DEVELOPMENT FARMERS HOME ADMINISTRATION

In Regards to the actions of the Rural Economic Community Development, formerly known as Farmers Home Administration, hereafter referred to as FmHA:

1. FmHA refused to release information in the file of Leon Smith when asked for under the Freedom of Information Act.

2. FmHA destroyed information and items in Leon Smith's file.

3. FmHA failed to follow the law in considering Leon Smith for debt restructuring.

I. Values of various properties with mortgages against them from FmHA:

	DALARS 3-25-91	New Appraisal as of 7-10-93
Rogers	$26970	$26000
Kelso	$76900	$7500 (date 7-16-93)
Sharp/Erwin	$74140	$45775 (date 11-12-93)
Ruth	$111070	$105500 (date 1-4-93)
Total	$289080	$184775

a. Appraisal of July 5, 1990 for $380,500 for Net Recovery Value on real estate should have been used.

b. No new Farm and Home Plan was used for the DALARS program on March 25, 1991.

c. The DALARS program that was run on March 25, 1991 was: 1) Never discussed with Leon Smith, 2) Not signed by the County Supervisor, and 3) Not submitted to the State Director.

II. In regards to the meeting of February 25, 1991 between the FmHA County Supervisor and the First National Bank of Clovis and Leon Smith:

a. FmHA states that Leon Smith provided the figures for the DALARS program and was interested in a write down only and not loan servicing. This is incorrect.

III. Leon Smith offered to convey land over to FmHA and go into a Lease Buy Back arrangement as provided for in regulations, and County Supervisor refused on the grounds that the land was not worth the loan amount, but instead offered to loan Leon Smith and [sic] additional $100000.

IV. FmHA had a superior lien over the First National Bank of Clovis in regards to Leon Smith's property, but knowingly failed to object to First National Bank of Clovis' claim of superiority and failed to protect the government's interest in this matter. This allowed the First National Bank of Clovis to effectively squash Leon Smith's Chapter 12 Bankruptcy Bid, as had FmHA held their superior lien, the amount of First National Bank of Clovis' loan as guaranteed by FmHA, could have been written down, as provided for in the FmHA rules and regulations. See Case No. 12-91-12451 RR in the U.S. Bankruptcy Court.

4. Tom Hunton of the Curry County, New Mexico FmHA, refused to accept a valid application form (1951-S) for loan restructuring on March 5, 1993 by Certified Mail, before the due date. When re-sent by Certified Mail after the March 8, 1993 deadline, was accepted.

5. FmHA did not follow the regulations and laws in the 1987 and 1990 Farm Credit Act for servicing Leon Smith's loans.

6. When posting FmHA foreclosure bid for Leon Smith's land on the door to FmHA, the ASCS, and the Soil Conservation Service FmHA posted a lesser amount of value per acre from what the appraisal in the file dictated. No evidence exists in Leon Smith's file to validate the

amount posted on the doors to the FmHA, ASCS, and Soil Conservation Service offices nor any appraisal for that amount.

7. Twice during a period of 30 days before Leon Smith's eviction date, a black helicopter bearing no markings and carrying personnel from the Curry County Sheriff's Department and other United States employees circled low over Leon Smith's residence. At this time, Leon Smith felt that his life was being threatened.

In regards to the Qui Tam under the False Claims Act:

1. Under the 1985 and 1990 Farm Bills, the $50,000 limit was to be allowed to individual entities and as much as $50,000 from two other corporations that the individual was partners in, thus effectively raising the possible limit to $100,000. Individuals as well as corporations were considered entities. An entity had to own separate property and employee separate labor, with partners in a corporation each owning at least 50%. This separation is often overlooked by local and national authorities in certain cases.

2. Under the Emergency Feed Program of 1985 and 1990, in order to collect benefits, the cattle must be kept on the farm land or ranch. Benefits were collected in some cases by individuals who had moved cattle to commercial feedlots.

3. Individual farm allotments were changed from non irrigated status to irrigated status based on falsified information with local authority help.

WHEREFORE, DEFENDANTS FEEL THAT THE GOVERNMENT HAS VIOLATED THE FOLLOWING:

1.	Inspector General Act of 1978	31 USC 3801
2.	Office of Special Council	5 USC 3 Sec 76
3.	Whistle Blowers Act of 1989	5 USC 1201 Sec 2 (3)
4.	Privacy Act	7 USC Sec 1983
5.	Freedom of Information Act	5 USC Sec 552
6.	Public Information Act	5 USC Sec 552(a)
7.	Agriculture Credit Act	7 USC Sec 193(b)
8.	Agriculture Credit Act	7 USC Sec 193(c)
9.	Agriculture Credit Act	7 USC Sec 609
10.	Agriculture Credit Act	7 USC Sec 1951
11.	Agriculture Credit Act	7 USC Sec 1989(c)
12.	Agriculture Credit Act	10 USC Sec 2409(a)
13.	Agriculture Credit Act	28 USC Sec 1346
14.	Agriculture Credit Act	1987 and 1990
15.	Federal Tort Claims Act	USC 2802(b)(8) Title S
16.	Qui Tam under False Claims Act	18 USC Sec 287
17.	Qui Tam under False Claims Act	31 USC Sec 3730
18.	Public Health and Welfare	42 USC-a Sec 1983
19.	The Constitution of the United States	
20.	United States Administrative Procedure Act	

PRAYER FOR RELIEF

1. The Court for the chance to tell their side of the story to a Federal Judge.

2. Clear title to the land that they are foreclosing on (S27 T4 NR37E NMPM, Lots 1,2,3,4) and whatever monetary damages that the court deems a just deterrent.

Thank You,

/s/ R Leon Smith

/s/ S. Diane Smith

R. Leon Smith
6314 Forest Hills Ct., N.E.
Albuquerque, N.M. 87109
(505) 822-9301

S. Diane Smith
6314 Forest Hills Ct., N.E.
Albuquerque, N.M. 87109
(505) 822-9301

APPENDIX 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

NO. CIV 94-1255
MV/LFG

vs.

R. LEON SMITH, and S. DIANE SMITH a/k/a SYLVIA D. SMITH and SYLVIA DIANE SMITH,

Defendants.

STIPULATION OF DISMISSAL

(Filed Jan. 22, 1996)

The parties, by their undersigned attorneys, hereby stipulate and agree that this action is dismissed with prejudice, with each party to bear their own costs. Matters raised by either side in the above captioned action were not adjudicated and defendants counterclaims and defenses remain viable for independent adjudication.

This Stipulation is entered into in accordance with the provisions of Rule 41(a)(1)(ii), *Federal Rules of Civil Procedure*.

JOHN J. KELLY
United States Attorney

/s/ Manuel Lucero
MANUEL LUCERO
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, New Mexico
87103
(505) 766-3341

Telephonic Approval given
1/19/96
Donald G. Gilpin
Attorney for defendants
820 2nd St. NW
Albuquerque, NM 87102
(505) 246-8829